

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BRIAN A. CLARKE,

Petitioner,

v.

//

CIVIL ACTION NO. 1:15CV33
CRIMINAL ACTION NO. 1:13CR2
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 71]

On March 4, 2015, the pro se petitioner, Brian A. Clarke ("Clarke"), filed a motion to vacate pursuant to 28 U.S.C. §§ 2255, which the Court referred to United States Magistrate Judge Robert W. Trumble for initial screening and a Report and Recommendation ("R&R") in accordance with LR PL P 2.

On July 28, 2015, Magistrate Judge Trumble issued a R&R, in which he recommended that the Court dismiss Clarke's petition as untimely (Dkt. No. 7 at 5). Clarke, whose conviction became final on August 30, 2013, failed to file his § 2255 motion until March 4, 2015, over seven months after the one-year statute of limitations had expired. Id.

The R&R also specifically warned Clarke that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. Id. at 5-6. The parties did not file any objections.¹ Consequently,

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the

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finding no clear error, the Court **ADOPTS** the Report and Recommendation in its entirety (Dkt. No. 7), **DENIES** the motion to vacate (Dkt. No. 1), and **ORDERS** that this case be **DISMISSED WITH PREJUDICE** and stricken from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: October 15, 2015.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).